APPENDIX A.

Opinion.

In the United States District Court, Central District of California.

United States of America, Plaintiff v. The Times Mirror Company, Defendant. Civil No. 65-366-F.

Filed: Oct. 11, 1967.

This action was commenced on March 5, 1965, when the government filed its complaint in a civil action alleging that the acquisition on June 25, 1964, by The Times Mirror Company of all the shares of stock of The Sun Company for $15,000,000 violates the antitrust laws of the United States.

The government challenges the acquisition by the publisher of the largest daily newspaper in Southern California (the Los Angeles Times) of the largest independent daily newspaper publisher in Southern California (The Sun Company). It contends that Times Mirror's acquisition and ownership of the stock of The Sun Company constitutes an unlawful control and combination which unreasonably restrains interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1,[1] and that the effect of the acquisition may be to substantially lessen competition in vio-

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[1]Section 1 of the Sherman Act, 15 U.S.C. §1, provides in pertinent part:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is declared to be illegal . . . ."

lation of Section 7 of the Clayton Act, 15 U.S.C. § 18.[2]

The government seeks an order of divestiture and an injunction which would prohibit the defendant from purchasing any other newspaper in the relevant geographic market.

Venue is in this court by reason of the fact that The Times Mirror Company, a California corporation, transacts business in the Central District of California and has its principal office in Los Angeles. 15 U.S.C. §22.

The Acquiring Company.

The Times Mirror Company is a highly diversified holding company with large interests in newspaper publishing, book publishing and commercial printing. Between 1960 and 1964, its total assets increased from $81,014,000 to $165,162,000, its revenues rose from $112,560,000 to $196,537,000 and its earnings after taxes more than doubled. A large part of its growth is attributed to a number of acquisitions.

When it acquired The Sun Company, Times Mirror published the Los Angeles Times, mornings and Sundays, and through its wholly-owned subsidiary Orange Coast Publishing Company, published the Orange Coast Daily Pilot, an evening newspaper pub-

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[2]Section 7 of the Clayton Act, 15 U.S.C. §18, provides in pertinent part:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital . . . of another corporation engaged also in commerce, where in any line of commerce in any section of the country the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

lished in four editions in the beach area south of Los Angeles.

The Los Angeles Times, which is The Times Mirror Company's principal enterprise, has been in terms of circulation the largest daily newspaper published in California since 1948 (790,255 in 1964), and the largest Sunday newspaper since 1951 (1,122,143 in 1964). It has led all newspapers in the United States in total annual daily and Sunday advertising lineage since 1955 and in total annual editorial and feature matter lineage since 1951. It has advertising offices not only in California but also in Chicago and New York. It operates the Los Angeles Times Syndicate, which distributes and sells approximately 35 newspaper features in more than 1,000 publications throughout the world, and through the Los Angeles Times—Washington Post News Service, provides news to about 90 daily newspapers.

Although it is published in Los Angeles, it circulates in substantial numbers and is home delivered throughout Southern California, and maintains advertising offices and reporters, full and part-time, throughout.

As to syndicated features which it purchases, the Times has followed a policy of obtaining exclusive rights in the area of Santa Barbara on the north to San Diego on the south and to the Coloraro River on the east; its policy has been and is to deny use of such features to other daily newspapers in its exclusive area.

In recent years, the Times has published five suburban or zone sections, each of which is distributed as part of the Times in a specific geographic area, their purpose being to compete with local newspapers in those areas for circulation and advertising. These suburban

sections, which carry local news of the specific area in which they are distributed, also carry advertising at lower rates than are charged for the full run of the paper.

The Los Angeles Times is a newspaper with special focus on the interpretation of news and issues and specialization in financial news, entertainment, art, sports, and special interest subjects. It has 17 exclusive bureaus in various parts of the world and 12 full-time reporters in the nation's capital, as well as national bureaus in such places as New York, Chicago, Atlanta, Houston, Sacramento and San Francisco.

The Acquired Company.

At the time of the acquisition, The Sun Company was the largest independent newspaper publishing company in Southern California. The company was located in San Bernardino County, which adjoins Los Angeles County to the east. It was locally owned, primarily by the Guthrie family, and none of its owners had significant interests in other newspapers. The Sun Company was not only a prosperous publisher with morning, evening and Sunday newspapers, but it also owned Acme Colorprint Company which supplies color comic printing to most of the Southern California Sunday newspapers.

The Sun Company was in sound financial condition with total assets of $4,551,261 and its net income from newspaper operations in 1964 exceeded $1,000,000. Each year from 1960 to 1964, its revenues from the operations of its newspapers and the Acme Colorprint Company approximated $8,000,000.

With its three newspapers, the morning Sun, the evening Telegram and the Sunday Sun-Telegram, the Sun Company dominated the daily newspaper business in San Bernardino County. The only difference between the Sun and the Telegram was that the first was published in the morning and the latter in the evening. Substantially, they were the same paper without change in editorial opinion, features or news. The combined weekday circulation of the Sun and the Telegram was nearly three times as large as that of the next largest daily published in the county and more than eight times as large as any other daily published there.

In 1964 the Sun was the only morning newspaper published daily in San Bernardino County. Its daily circulation was 53,802. The Sun-Telegram was the largest Sunday newspaper published there with a circulation of 70,664. They were the only newspapers other than the Los Angeles papers (the Times and the evening and Sunday Herald-Examiner) which were home delivered throughout San Bernardino County.

The Sun covered all of San Bernardino County with news and zone editions. In addition to a city zone for the City of San Bernardino and a free weekly advertising shopper, it distributed nine zone editions to specific areas of the county.

Both the morning Sun and the Sunday Sun-Telegram carried a substantial amount of state, national and international news, complete stock reports of the New York and American Stock Exchanges, national sports news, nationally known columnists, comics and other syndicated features, and Los Angeles television and radio logs. The Sun maintained editorial and

advertising offices in the larger communities of San Bernardino County and purchased the whole of the county as exclusive territory for certain of its syndicated features.

The Acquisition.

Negotiations for the acquisition of The Sun Company by the defendant extended over several years on a sporadic basis. They were first begun by Norman Chandler, Chief Executive of Times Mirror, in 1962 when he contacted his long-time friend, James A. Guthrie, to inquire as to whether Mr. Guthrie was interested in selling. Mr. Chandler was interested in The Sun Company because it had a fine reputation and it was in a growth area that in the long run would prove to be a good investment. Mr. Guthrie was not interested. Subsequently, however, he informed Mr. Chandler that if he received an offer which was high enough he would consider selling. Further negotiations ensued culminating in an offer of an exchange of stock which was not accepted.

In 1964, negotiations were resumed and a proposal was made by Times Mirror for $12.5 million in cash which was refused. In June, 1964, the Pulitzer Publishing Company of St. Louis made a cash offer to Mr. Guthrie of $15 million.

Mr. Guthrie realized the $15 million offer of Pulitzer could not be ignored. However, he preferred that The Sun Company be sold to Times Mirror for a number of reasons. First, he felt that the interests of Times Mirror and The Sun Company in the development of the West were the same. Second, Norman Chandler was a director of three of the largest corporations in San

Bernardino County: Kaiser Steel Corporation, The Atchison, Topeka & Santa Fe Railroad and Safeway Stores, Inc. Third, he treasured the friendship that existed between the Chandler family and his family beginning in the days of General Otis. Finally, he disapproved of the Pulitzer policies and politics.

Because of the Pulitzer offer, Mr. Guthre, Sr., asked his son, James K. Guthrie, to call Otis Chandler, Norman Chandler's son and the publisher of the Times, and inform him that an offer of $15 million had been made to purchase the newspaper and to say that if Times Mirror was truly interested they had better move quickly. Mr. Guthrie had made the decision to sell because of advice concerning his estate planning.

As a result of James K. Guthrie's phone call on June 20, 1964, Norman Chandler went to San Bernardino and conferred with Mr. Guthrie, Sr., at the latter's home. Mr. Guthrie told Mr. Chandler that he had received an offer of $15 million from the Pulitzers. Mr. Chandler stated, "We will meet the price of $15 million." They shook hands and five days later the sale was formally completed.

Jurisdiction.

The Times Mirror Company and The Sun Company are now and were at the time of the acquisition corporations engaged in interstate commerce.

Both company newspapers regularly publish news, features and other information gathered from outside California for dissemination to their readers; both sell advertising to out-of-state advertisers with the result that advertising materials, contracts, copy and payment cross state lines; and both disseminate this out-of-state advertising to their readers.

The Times Mirror Company and The Sun Company newspapers are members of the Associated Press and the United Press and, as such, are obligated to furnish news originating within their respective areas to these wire services for use by other newspaper members, many of which are outside of California.

The two companies have numerous agreements with out-of-state feature syndicates under which they are provided with features for publication in return for regular payment to said syndicates, and both use substantial amounts of newsprint produced and shipped from production facilities outside California.

In describing the daily newspaper business in *Lorain Journal Co. v. United States,* 342 U.S. 143 (1951), the Supreme Court stated:

> "There can be little doubt today that the immediate dissemination of news gathered from throughout the nation or the world by agencies specially organized for that purpose is a part of interstate commerce. *Associated Press v. United States,* 326 U.S. 1, 14; *Associated Press v. Labor Board,* 301 U.S. 103. The same is true of national advertising originating throughout the nation and offering products for sale on a national scale. The local dissemination of such news and advertising requires continuous interstate transmission of matrials and payments, to say nothing of the interstate commerce involved in the sale and delivery of products sold. . . .
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> "The distribution within Lorain of the news and advertisements transmitted to Lorain in interstate commerce for the sole purpose of immediate and profitable reproduction and distribution to the

> reading public is an inseparable part of the flow of the interstate commerce involved. . . . Unless protected by law, the consuming public is at the mercy of restraints and monopolizations of interstate commerce at whatever points they occur. Without the protection of competition at the outlets of the flow of interstate commerce, the protection of its earlier stages is of little worth." 342 U.S. at 151-52.

It is settled that the antitrust laws apply to the daily newspaper business. In *Associated Press v. United States,* 326 U.S. 1 (1945), the Court stated:

> "Member publishers of AP are engaged in business for profit exactly as are other business men who sell food, steel, aluminum, or anything else people need or want. See International News Service v. Associated Press. . . . All are alike covered by the Sherman Act." 326 U.S. at 7.

The facts presented here differ markedly from those in *Page v. Work,* 290 F. 2d 323 (9th Cir. 1961), where the newspaper involved was "primarily devoted to legal advertising [and] . . . carried insignificant quantities of national news and display advertising". 290 F.2d at 329.

Purpose of Section 7.

It is the conclusion of the court that the acquisition violates §7 of the Clayton Act and full relief may be granted thereunder. It is therefore unnecessary to discuss §1 of the Sherman Act.

The Supreme Court, in *Brown Shoe Co. v. United States,* 370 U.S. 294 (1962), pointed out in setting

forth the legislative history of the 1950 amendment to §7 of the Clayton Act that:

> "The dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy. Apprehension in this regard was bolstered by the publication in 1948 of the Federal Trade Commission's study on corporate mergers. . . . Other considerations cited in support of the bill were the desirability of retaining 'local control' over industry and the protection of small businesses. Throughout the recorded discussion may be found examples of Congress' fear not only of accelerated concentration of economic power on economic grounds, but also of the threat to other values a trend toward concentration was thought to pose." 370 U.S. at 315-16.

The Court declared:

> 1. Congress made it plain that §7 applied not only to mergers between actual competitors, but also to verticle and conglomerate mergers whose effect may tend to lessen competition in any line of commerce in any section of the country. 370 U.S. at 317.
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> 2. The amendment provides authority for arresting mergers at a time when the trend to a lessening of competition in a line of commerce was still in its incipiency. 370 U.S. at 317.
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> 3. There are no particular tests for measuring the relevant product and geographic markets with which the anticompetitive effects of a merger were to be judged. 370 U.S. at 320-21.

4. A merger must be functionally viewed in the context of its particular industry. 370 U.S. at 321-22.

5. Congress used the words "*may be* substantially to lessen competition" (emphasis supplied) to indicate that its concern was with probabilities, not certainties. 370 U.S. at 323.

Since *Brown Shoe, supra,* the Supreme Court has consistently set forth in specific holdings the intent of Congress.

In *United States v. Philadelphia Nat'l Bank,* 374 U.S. 321 (1963), it was declared that §7 requires not only an appraisal of the immediate impact of the merger on competition but also a prediction of the merger's effect on competitive conditions in the future to prevent the destruction of competition.

In *United States v. El Paso Gas Co.,* 376 U.S. 651 (1964), although the acquired company had not gained entry into California for its product, its effect as a potential supplier made it a substantial competitive factor in the expanding California market.

In *United States v. Aluminum Co. of America,* 377 U.S. 271 (1964), it was held that the degree of competition between two products not only justified grouping them in a single product market for the purpose of analyzing the competitive aspects of a merger but also did not prevent their division into separate submarkets for §7 purposes. 377 U.S. at 275.

In *United States v. Continental Can Co.,* 378 U.S. 411 (1964), the Court held that between two different industries there was "over the long run the kind of consumer response to innovation and other competitive